



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ADOPTION CAUSE NO. 32 OF 2019 (OS)

AND

IN THE MATTER OF THE CHILDREN'S ACT (NO. 8 OF 2001)

AND

IN THE MATTER OF BABY VG alias VG alias TVD alias TV

AND

AN APPLICATION FOR ORDERS OF ADOPTION OF BABY VG alias VG alias TVD alias TV

BY

JGN and his wife A EWW

JUDGEMENT

1. By the Originating Summons dated 19.12.18, the Applicants JGN and AEWW seek to adopt a child known as VG alias VG alias TVD alias TV. The Applicants have been assessed by Change Trust Adoption Society, a registered adoption society and taken through the adoption process and its implications. Upon review and considering the Applicants' case, the society's case committee sitting on 28.3.17 was satisfied of the Applicants' suitability to adopt a female child.
2. The child who is estimated to have been born on 29.11.14 was found abandoned along Covent Drive on 15.8.15. She was then estimated to be about 9 months old. The child was rescued by a Good Samaritan, one Mr. Emmanuel Mbogo of mobile phone No 0724xxxxxx. The matter was reported at Muthangari Police Station by vide Occurrence Book Number x/xx/x/2015. On the same day, the child was admitted at House of Charity Children's Home for temporary care and protection pending committal. Thereafter on 23.3.16, the child was formally committed to the same home by the Children's Court at Nairobi *vide* Protection and Care Case Number 60 of 2016 for a period of 3 years. In its final letter dated 17.3.16, Muthangari Police Station confirmed that since the child was reported abandoned on 15.8.15, no one had come forward to claim her.
3. JMM was on 24.10.19 appointed as guardian *ad litem* for the child pending the hearing and determination of the adoption application, in accordance with Rule 8 of the Adoption Rules.
4. The Applicants have gone through the requisite assessments, and reports in respect thereof have been filed. Change Trust which arranged the adoption of the child filed its report dated 25.8.19. For the Director of Children Services was filed a report dated 7.2.20 prepared by Mary Atati, Principal Children's Officer and countersigned by Mary Mbuga, County Co-ordinator, Nairobi. JMM the guardian *ad litem*, also filed her report dated 26.7.20. I have carefully assessed the said reports. They are all favourable, and recommend the proposed adoption.
5. I note that the child has been in continuous care and control of the Applicant for a period of over 3 years which is more than the statutory 3 months required under Section 157 of the Act. Although the male Applicant is 69 years old, the female Applicant is under 65 years of age. The Applicants are not younger than 25 years nor older than 65 years. They are more than 21 years older than the child. Accordingly, Section 158 of the Act has been complied with. The Applicants have been made aware of the consequences of an adoption order as well as the rights of an adopted child. They shall assume all parental rights and duties of the biological parents in respect of the child. I am satisfied that they fully understand that the adoption order is final and binding during the lifetime of the child and the Applicants cannot under any circumstances give up the child. They also understand that the child shall have the right to inherit their property together with the male Applicant's 2 children from his first marriage. The Applicants have demonstrated that they have the psychological and emotional capacity as

well as the material resources to raise the child in a loving home environment. They propose to name the child MMG.

6. The Applicants have nominated their friends, DNT and his wife DMM to be the legal guardian of the child, in the event of the Applicants dying or becoming incapacitated before the child is of full age. The proposed legal guardians were however not availed to the Court for examination as to their readiness, willingness and ability to be legal guardians of the child. No reason was given to the Court for their failure to appear before Court. Accordingly, the Court is unable to appoint them as legal guardians for the child. In this regard, the Court does note that under Section 164 of the Act, appointment of a guardian in the case of a local adoption, is not mandatory.

7. The Applicants seek that the Director of Immigration be authorised to issue the child with a Kenyan passport. This is an order that cannot be issued in these proceedings and the Court declines to grant the same. The Applicants are directed to make the requisite application to the Director of Immigration, for consideration.

8. Having taken into account the foregoing factors, this Court has formed the opinion that it would be in the best interests of the child that he be adopted by the Applicants. The Court is further satisfied that all the legal requirements for a local adoption have been met and makes the following Orders as prayed in the Originating Summons herein:

- a. The Applicants JGN holder of national identity card number [...] and his wife AEWV holder of national identity card number [...] are hereby allowed to adopt Baby VG alias VG alias TVD alias TV who shall henceforth be known as MMG.
- b. The child's date of birth is hereby declared to be 29.11.14.
- c. The Child is hereby declared to be a Kenyan citizen by birth.
- d. I direct the Registrar General to enter this order in the Adoption Register.
- e. JMM, the guardian *ad litem* is hereby discharged.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF JUNE, 2021

M. THANDE

JUDGE

In the presence of: -

..... **for the Applicant**

..... **Court Assistant**